

## DECLARATION FOR PATENT APPLICATION

Docket: A-1378

As a below named inventor, I hereby declare that:

My residence post office address and citizenship are as stated below next to my name.

I believe I am the original first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled BREAST BIOPSY SYSTEM AND METHOD the specification of which (check one)

is attached hereto

was filed on \_\_\_\_\_

as US Application Serial Number or PCT International Application Number \_\_\_\_\_

and was amended on \_\_\_\_\_ (if applicable).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability as defined in 37 CFR § 1.56.

I hereby claim foreign priority benefits under 35 U.S.C. §119(a)-(d) or §365(b) of any foreign application(s) for patent or inventor's certificate, or §365(a) of any PCT International application which designated at least one country other than the United States, listed below and have also identified below any foreign application for patent or inventor's certificate, or PCT International application having a filing date before that of the application on which priority is claimed.

Prior Foreign Application(s)

Priority Not Claimed

(Number)	(Country)	(Day/Month/Year Filed)	[ ]
(Number)	(Country)	(Day/Month/Year Filed)	[ ]

I hereby claim the benefit under 35 U.S.C. §119(e) of any United States provisional application(s) listed below.

<u>60/076,973</u>	<u>3-3-98</u>
(Application Number)	(Filing Date)

I hereby claim the benefit under 35 U.S.C. §120 of any United States application(s), or §365© of any PCT International application designating the United States, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT International application in the manner provided by the first paragraph of 35 U.S.C. §112, I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR §1.56 which became available between the filing date of the prior application and the national or PCT International filing date of this application.

(Application Number)	(Filing Date)	(Status -patented, pending, abandoned)
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I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith: Donald E. Stout, Reg. No. 34,493; Frank J. Uxa, Reg. No. 25,612;

Kenton R. Mullins, Reg. No 36,331; D. Jennings Meincke, Reg. No. 36,606

Address all telephone calls to Donald E. Stout at telephone number (714) 450-1750

Address all correspondence to Donald E. Stout

Peterson, Uxa & Stout

100 Pacifica, Suite 210

Irvine, CA 92618

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor (given name, family name) Fred H. Burbank

Inventor's signature

Residence

San Juan Capistrano, California

Post Office Address

30982 Steeplechase Drive, San Juan Capistrano, CA 92675

Date 4/3/98

Citizenship U.S.A.

Full name of second joint inventor (given name, family name) Michael L. Jones

Second Inventor's signature

Residence:

Capistrano Beach, California

Post Office Address:

34441 Camino El Molino, Capistrano Beach, CA 922624

Date 4/3/98

Citizenship U.S.A.

Full name of third joint inventor (given name, family name) Paul Lubock

Third Inventor's signature

Residence:

Laguna Niguel, California

Post Office Address

30 Bethany, Laguna Niguel, CA 92677

Date 4/3/98

Citizenship U.S.A.

Applicant or Patentee: Burbank et al.  
Serial or Patent No.:  
Filed or Issued: Herewith  
Title: Breast Biopsy System and Method

Docket No. A-1378

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS  
(37 CFR 1.9(f) & 1.27(e))—SMALL BUSINESS CONCERN**

I hereby declare that I am

[ ] the owner of the small business concern identified below:  
[x] an official of the small business concern empowered to act on behalf of the concern identified below:

FULL NAME BiopSolution Medical, Inc.  
ADDRESS 30982 Steeplechase Drive, San Juan Capistrano, CA 92675  
[ ] INDIVIDUAL [x] SMALL BUSINESS CONCERN [ ] NONPROFIT ORGANIZATION

I hereby declare that the above identified small business concern qualifies as a small business concern as defined in 13 CFR 121.12, and reproduced in 37 CFR 1.9(d), for purposes of paying reduced fees to the United States Patent and Trademark Office, in that the number of employees of the concern, including those of its affiliates, does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled: Breast Biopsy System and Method  
by inventor(s): Fred H. Burbank, Mike Jones, Paul Lubock

Described in

[x] the specification filed herewith  
[ ] application serial no. \_\_\_\_\_, filed \_\_\_\_\_  
[ ] patent no. \_\_\_\_\_, issued \_\_\_\_\_

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights in the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person made the invention, or by any concern which would not qualify as a small business concern under 37 CFR 1.9(d), or a nonprofit organization under 37 CFR 1.9(e). \*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
[x] INDIVIDUAL [ ] SMALL BUSINESS CONCERN [ ] NONPROFIT ORGANIZATION

NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
[x] INDIVIDUAL [ ] SMALL BUSINESS CONCERN [ ] NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statement made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statement were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

NAME OF PERSON SIGNING Fred H. Burbank  
TITLE OF PERSON IF OTHER THAN OWNER Chief Executive Officer  
ADDRESS OF PERSON SIGNING 30982 Steeplechase, San Juan Capistrano, CA 92675

SIGNATURE Fred H. Burbank DATE 4/3/98

Applicant or Patentee: Burbank et al.

Serial or Patent No.:

Filed or Issued: Herewith

Title: Breast Biopsy System and Method

Docket No. A-1378

**VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS  
(37 C.F.R. 1.9(f) & 1.27(b))—INDEPENDENT INVENTOR**

As a below named inventor, I hereby declare that I qualify as an independent inventor as defined in 37 C.F.R. 1.9(c) for purposes of paying reduced fees under section 41(a) and (b) of Title 35, United States Code, to the Patent and Trademark Office with regard to the invention entitled Breast Biopsy system and Method described in

the specification filed herewith

application serial no. \_\_\_\_\_, filed \_\_\_\_\_

patent no. \_\_\_\_\_, issued \_\_\_\_\_

I have not assigned, granted, conveyed or licensed and am under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor under 37 C.F.R. 1.9(c) if that person had made the invention, or to any concern which would not qualify as a small business concern under 37 C.F.R. 1.9(d) or a nonprofit organization under 37 C.F.R. 1.9(e).

Each person, concern or organization to which I have assigned, granted, conveyed, or licensed or am under an obligation under contract or law to assign, grant, convey, or license any rights in the invention is listed below:

no such person, concern, or organization

persons, concerns or organizations listed below\*

\*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 C.F.R. 1.27)

FULL NAME

BiopSolution Medical, Inc.

ADDRESS

30982 Steeplechase Drive, San Juan Capistrano, CA 92675

INDIVIDUAL

SMALL BUSINESS CONCERN

NONPROFIT ORGANIZATION

FULL NAME

ADDRESS

INDIVIDUAL

SMALL BUSINESS CONCERN

NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 C.F.R. 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Fred H. Burbank  
NAME OF INVENTOR

Michael L. Jones  
NAME OF INVENTOR

Paul Lubock  
NAME OF INVENTOR

Fred H. Burbank  
SIGNATURE OF INVENTOR

Michael L. Jones  
SIGNATURE OF INVENTOR

Paul Lubock  
SIGNATURE OF INVENTOR

4/3/98

4/3/98

4/3/98

DATE

DATE

DATE

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of ) Examiner: M. Hindenburg  
Burbank et al. )  
For: BREAST BIOPSY SYSTEM AND ) Group Art Unit: 3736  
METHODS )  
Serial No.: 09/057,303 )  
Filed: April 8, 1998 )  
Docket No.: 26684-1000 )

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POWER OF ATTORNEY BY ASSIGNEE AND REVOCATION OF PRIOR POWERS

The Assistant Commissioner for Patents  
Washington, DC 20231

Dear Sir:

As Assignee of the entire interest of the above-identified patent application, all powers of attorney previously given are hereby revoked and the following attorneys are hereby appointed to prosecute and transact all business in the Patent and Trademark Office in connection with the above-identified application.

EDWARD J. LYNCH, Registration No. 24,422  
JACQUES DULIN, Registration No. 24,067  
HERWIG von MORZE, Registration No. 29,484  
DEREK P. FREYBERG, Registration No. 29,250  
Y. PING CHOW, Registration No. 30,740  
WILLIAM SCHMONSEES, Registration No. 31,796  
WALTER KURZ, Registration No. 37,373  
ROBERT F. DENNIS, Registration No. 40,988  
SOODABEH TRONSON, Registration No. 41,354  
WILLIAM B. ANDERSON, Registration No. 41,585  
PRISCILLA H. MARK, Registration No. 41,970  
VICTORIA L. BOYD, Registration No. 43,510  
ALICIA HAGER, Registration No. 44,140

of the firm

DEC. 21, 1999 1:01PM

NO. 3869 P. 3

HELLER, EHRMAN, WHITE & MC AULIFFE  
525 University Avenue  
Palo Alto, CA 94301-1900  
(650) 324-7000

and

GEORGE M. COOPER, Registration No. 20,201  
ERIC S. SPECTOR, Registration No. 22,495  
FELIX J. D'AMBROSIO, Registration No. 25,721  
DOUGLAS R. HANSCOM, Registration No. 26,600  
JIM W. HELLWEGE, Registration No. 28,808  
WILLIAM A. BLAKE, Registration No. 30,548  
COLIN D. BARNITZ, Registration No. 35,061

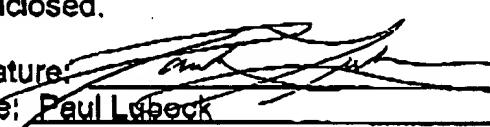
of the firm:

JONES, TULLAR & COOPER, P.C.  
2001 Jefferson Davis Highway  
Box 2266, EADS Station  
Arlington, VA 22202  
(703) 415-1500

Address all correspondence and direct all telephone calls to:

Edward J. Lynch  
HELLER, EHRMAN, WHITE & MC AULIFFE  
525 University Avenue  
Palo Alto, CA 94301-1900  
Direct Dial: (650) 324-7098

The assignment for the above application was filed with the patent application on April 8, 1998, and a copy of which is enclosed.

Signature: 

Name: Paul Labeck

Title: Chief Operating Officer

Date: 12/21/99

HELLER, EHRMAN, WHITE & MC AULIFFE  
525 University Avenue  
Palo Alto, CA 94301-1900  
Telephone: (650) 324-7000  
Facsimile: (650) 324-0638

## AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

BiopSolation Medical, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

A. The name of this corporation on the original Certificate of Incorporation is BiopSolation Medical, Inc. The original Certificate of Incorporation was filed with the Secretary of the State of Delaware on January 21, 1998.

B. Pursuant to Sections 228, 242, and 245 of the General Corporation Law of the State of Delaware, this Amended and Restated Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of this corporation.

C. The text of the Certificate of Incorporation as heretofore amended or supplemented is hereby amended and restated as follows:

ONE        The name of this corporation is SenoRx, Inc.

TWO        The address of the corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle,

Zip Code 19801. The name of its registered agent at such address is The Corporation Trust Company.

THREE The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of Delaware.

FOUR This corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the corporation is authorized to issue is 22,975,000 shares, 20,000,000 shares of which shall be Common Stock (the "Common Stock") with a par value of \$.001 and 2,975,000 shares of which shall be Preferred Stock (the "Preferred Stock") with a par value of \$.001.

FIVE The rights, preferences, privileges, restrictions and other matters relating to the 2,975,000 shares of Preferred Stock are as follows:

1. Designation. 2,975,000 shares of Preferred Stock are hereby designated Series A Preferred Stock ("Series A Preferred").

2. Dividends. The holders of the Series A Preferred shall be entitled, when and if declared by the Board of Directors of the corporation, to dividends out of the corporation's assets legally available therefor at the rate of \$0.08 per share per annum. Dividends on the Preferred Stock shall be payable in preference and prior to any payment of any dividend on the Common Stock of the corporation. Thereafter, the holders of Preferred Stock and Common Stock shall be entitled, when and if declared by the Board of Directors, to dividends out of the corporation's assets legally available therefor; provided, however, that no such dividends may be declared or paid on any shares of Common Stock or Preferred Stock unless at the same time an equivalent dividend is declared and paid on all outstanding shares of Common Stock and Preferred Stock; and provided further that the dividend on any series of any Preferred Stock shall be payable at the same rate per share as would be payable on the shares of Common Stock or other securities into which such series of Preferred Stock is convertible immediately prior to the record date for such dividend. The right to such dividends on shares of the Common Stock or Preferred Stock shall not be cumulative, and no right shall accrue to holders of Common Stock or Preferred Stock by reason of the fact that dividends on said shares are not declared in any prior period.

3. Liquidation Preference.

(a) Preference. In the event of any liquidation, dissolution or winding up of the corporation, either voluntarily or involuntarily, the holders of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the corporation to the holders of Common Stock of the corporation, an amount equal to \$1.00 per share for each share of Series A Preferred then so held plus a further amount equal to any dividends declared but unpaid on such shares.

at the request of the corporation or any predecessor to the corporation. Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Amended and Restated Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ELEVEN The corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the corporation has caused this Amended and Restated Certificate to be signed by its President, and attested by its Secretary, this 21<sup>st</sup> day of April, 1998.

Fred H. Burbank

Fred H. Burbank, President and Chief Executive Officer

Casey J.

J. Casey McGlynn, Secretary

09920074 - 0884302

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the application of ) Examiner: M. Hindenburg  
 Fred H. Burbank *et al.* )  
 For: **BREAST BIOPSY SYSTEM AND** ) Group Art Unit: 3736  
**METHODS** )  
 Serial No.: 09/057,303 )  
 Filed: April 8, 1998 )  
 )  
 Docket No.: 26684-1000

CHANGE OF NAME OF ASSIGNEE

## BOX ASSIGNMENT

Commissioner of Patents and Trademarks  
 Washington, D.C. 20231

Dear Sir:

An Assignment has been recorded in the Patent and Trademark Office for the above-referenced application on April 8, 1998, at Reel/Frame 9091/0338, copy enclosed.

The former name of Assignee shown on the enclosed assignment is BiopSolution Medical, Inc. The new name of Assignee is SenoRx, Inc.

The proof of change of name is established by the attached Amended and Restated Certificate of Incorporation which is to be recorded per the attached "Recordation Form Cover Sheet".

Enclosed is a check for \$40, to cover the fees under 37 C.F.R. §1.21(h), Fee Code 581. The Commissioner is authorized to charge any additional fees and to credit any overpayment of fees which may be required in connection with this communication to Deposit Account No. 08-1641, referencing Docket No. 26684-1000.

Respectfully submitted,

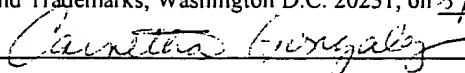
By: 

William B. Anderson  
 Registration No. 41,585

Heller Ehrman White & McAuliffe LLP  
 525 University Avenue, Suite 1100  
 Palo Alto, CA 94301-1900  
 Telephone: (650) 324-7000  
 Facsimile: (650) 324-0638

## CERTIFICATE OF MAILING PURSUANT TO 37 CFR §1.8

I hereby certify that this paper is being deposited in the USPS as first class mail with sufficient postage in an envelope addressed to BOX ASSIGNMENT, Commissioner of Patents and Trademarks, Washington D.C. 20231, on 8/23/00, in San Diego, CA



WHEN RECORDED, RETURN TO:

Donald E. Stout  
100 Pacifica, Suite 210  
Irvine, CA 92618

**ASSIGNMENT**

WHEREAS, we, FRED H. BURBANK, MICHAEL L. JONES, and PAUL LUBOCK, all of the County of Orange, State of California, have invented certain new and useful improvements in for a

**BREAST BIOPSY SYSTEM AND METHOD**

for which the said FRED H. BURBANK has this 3<sup>rd</sup> day of April, 1998 executed application papers for United States Letters Patent thereon,

for which the said MICHAEL L. JONES has this 3 day of April, 1998 executed application papers for United States Letters Patent thereon,

for which the said PAUL LUBOCK has this 3 day of April, 1998, executed application papers for United States Letters Patent thereon; and

WHEREAS, BiopSolation Medical, a Corporation of the State of Delaware, hereinafter called Assignee, having its place of business at 30982 Steeplechase, San Juan Capistrano, California 92675 is desirous of acquiring the entire right, title and interest in and to the aforesaid invention and in and to any and all Letters Patent therefor granted in the United States of America, and in any and all countries foreign thereto;

NOW, THEREFORE, TO WHOM IT MAY CONCERN, be it known that, for and in consideration of the sum of ONE DOLLAR (\$1.00) to us in hand paid by Assignee, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, we, FRED H. BURBANK, MICHAEL L. JONES, and PAUL LUBOCK by these presents sell, assign and transfer unto Assignee, its successors and assigns, the full and exclusive right, title and interest for the territory of the United States of America and all countries foreign thereto (including the right to apply for Letters Patent in foreign countries in its own name and to claim any priority rights for such foreign applications to which such applications are entitled under international

conventions, treaties, or otherwise), in and to the said invention as described in said application, and in and to all Letters Patent granted therefor, and all divisions, reissues and continuations thereof, and we hereby authorize and request the Commissioner of Patents and Trademarks to issue all Letters Patent on said inventions or resulting therefrom to said Assignee, as assignee of the entire right, title and interest, and we covenant that we have full right so to do and agree that we will communicate to said Assignee, or its successors any and all facts known to us regarding said invention whenever requested, sign all lawful papers, and generally do everything possible to aid said Assignee, its successors and assigns, to obtain and enforce proper patent protection for said invention in all countries.

Executed this 3<sup>rd</sup> day of April, 1998.

Fred H. Burbank

FRED H. BURBANK

STATE OF CALIFORNIA /

/

COUNTY OF ORANGE /

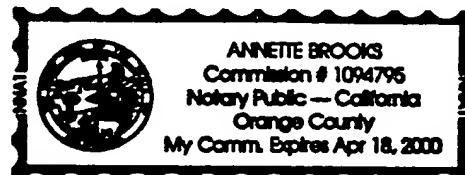
/

On April 3, 1998, before me Annette Brooks personally appeared FRED H. BURBANK personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature

Annette Brooks



SEAL

Executed this 3 day of April, 1998.

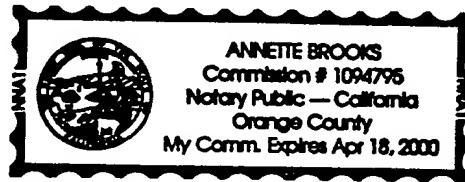
*Michael L. Jones*  
MICHAEL L. JONES

STATE OF CALIFORNIA /  
/  
COUNTY OF ORANGE /

On April 3, 1998, before me Annette Brooks personally appeared MICHAEL L. JONES personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

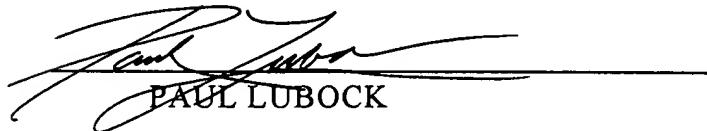
Witness my hand and official seal.

Signature *Annette Brooks*



SEAL

Executed this 3<sup>rd</sup> day of April, 1998.



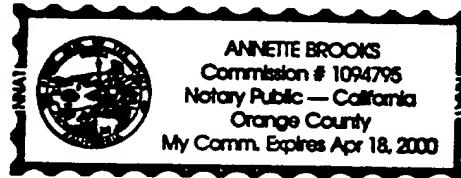
**PAUL LUBOCK**

STATE OF CALIFORNIA /  
/  
COUNTY OF ORANGE /

On April 3, 1998, before me Annette Brooks personally appeared PAUL LUBOCK personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature 



SEAL